

1 **PROOF OF SERVICE**

2 *Sweeting v. Jason Kishaba, et al*  
3 **OCSC Case Number 30-2008-104237**

4 I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I  
5 am employed in the City of San Francisco, California; my business address is Severson & Werson,  
6 One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

7 On the date below I served a copy, with all exhibits, of the following document(s):

8 **[PROPOSED] ORDER GRANTING GMAC MORTGAGE, LLC'S MOTION TO  
9 STRIKE PLAINTIFF ROBERT SWEETING'S VERIFIED SECOND AMENDED  
10 COMPLAINT**, on all interested parties in said case addressed as follows:

11 **SEE SERVICE LIST ATTACHED**

12 ☐ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary  
13 business practices. I am readily familiar with the firm's practice of collecting and processing  
14 correspondence for mailing. On the same day that correspondence is placed for collection and  
15 mailing, it is deposited in the ordinary course of business with the United States Postal Service in  
16 Irvine, California in sealed envelopes with postage fully prepaid.

17 ☐ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons  
18 listed above and providing them to a professional messenger service for delivery.

19 ☐ **(BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other  
20 facility regularly maintained by Federal Express with delivery fees paid or provided for.

21 ☐ **(BY FAX)** By use of facsimile machine telephone number (949) 442-7118, I faxed a true copy  
22 to the addressee(s) listed above at the facsimile number(s) noted after the party's address. The  
23 transmission was reported as complete and without error. The attached transmission report, which  
24 sets forth the date and time for the transmission, was properly issued by the transmitting facsimile  
25 machine.

26 ☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above document(s) via  
27 electronic transmission (e-mail) at \_\_\_\_\_ a.m./p.m. using e-mail address (\_\_\_\_@severson.com) to  
28 the e-mail address designated for each party identified above. I did not receive, within a reasonable  
time after the transmission, any electronic message or other indication that the transmission was  
unsuccessful.

☒ **(STATE)** I declare that I am employed in the office of a member of the bar of this Court at  
whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

This declaration is executed in Irvine, California, on August \_\_, 2010.

25 \_\_\_\_\_  
26 Liz C. Roberts

**SERVICE LIST**

*Sweeting v. Jason Kishaba, et al*  
**OCSC Case Number 30-2008-104237**

Robert Sweeting  
16077 Crete Lane  
Huntington Beach, CA 92649

Plaintiff in Pro Per

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Attorneys for SIGNATURE GROUP  
HOLDINGS, INC., successor in interest to  
Fremont Reorganizing Corporation

Telephone: (714) 666-1362  
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Email:

**EXHIBIT “ I ”**



FEES WAIVED \$ 250 - GOV CODE 68511.3

1 Robert Sweeting, Pro Per  
16077 Crete Lane  
2 Huntington Beach, Ca. 92649  
Ph. 562-394-8218  
3 Fax 714-846-8522

4  
5 Plaintiff Robert Sweeting

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

SEP 21 2010

ALAN CARLSON, Clerk of the Court

BY J. TRAN

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

30-2010

11 ROBERT SWEETING,

12 *Plaintiff,*

13 vs.

14 GMAC MORTGAGE LLC., DOES 1 through  
15 25, inclusive,

16 *Defendants.*

CASE No.:

00410079

COMPLAINT FOR:

1. FOR DEFAMATION/TORTIOUS INTERFERENCE WITH CREDIT
2. ACCOUNTING
3. DECLARATORY AND INJUNCTIVE RELIEF

JUDGE RANDELL L. WILKINSON

DEPT. C25

17 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

- 18 1. Plaintiff, Robert Bruce Sweeting, is a competent adult and a resident of Huntington  
19 Beach, County of Orange, State of California.
- 20 2. Defendant, GMAC MORTGAGE LLC, (hereinafter alternatively "Defendant/GMAC") is  
21 a business entity, form unknown, conducting business within the County of Orange, State  
22 of California.
- 23 3. Plaintiff is ignorant of the true names and capacity of defendants sued in this complaint as  
24 DOES 1 through 25, inclusive, and therefore sues these defendants by these fictitious  
25 names. Plaintiff will amend this complaint once the true names and capacities are  
26 ascertained. The Plaintiff is informed, believes, and thereon alleges that each of the  
27 fictitiously named defendants are responsible in some manner for the occurrences herein  
28

COMPLAINT

Page 1

1 alleged, and that the plaintiff's damages as herein alleged were proximately caused by  
2 their conduct. Plaintiff is informed, believes, and thereon alleges that each of these  
3 fictitiously named defendants claim some right, title, estate, lien or interest in the  
4 hereinafter-described property adverse to plaintiff's title, and their claims, and each of  
5 them, constitute a cloud on plaintiff's title to that property.

6 4. At all times relevant hereto, the defendants GMAC MORTGAGE LLC and Does 1 to 25  
7 acting alone or as agents, or as employees, affiliates, or "nominees", or in concert with  
8 one another or other defendants.

9 5. Plaintiff was the legal owner of the real property that is the subject matter of this  
10 litigation is plaintiff's home of over twenty-two (22) years and is located at 16077 Crete  
11 Lane, Huntington Beach, California 92649 and legally described as follows:

12 PARCEL 1

13 LOT 30 OF TRACT NO. 9924, IN THE CITY OF HUNTINGTON BEACH, COUNTY  
14 OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 431  
15 PAGES 22 AND 23 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE  
16 COUNTY RECORDER OF SAID COUNTY.

17 PARCEL 2

18 AN EASEMENT FOR USE AND ENJOYMENT OF THE COMMON AREA, BEING  
19 LOT 46 OF SAID TRACT NO. 9924, REFERRED TO IN PARCEL 1 ABOVE, AS SET  
20 FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND  
21 RESTRICTIONS RECORDED IN BOOK 12914 PAGE 929, ET SEQ., OF OFFICIAL  
22 RECORDS OF ORANGE COUNTY, CALIFORNIA.

23 APN# 178-741-30

24 (hereinafter "SUBJECT PROPERTY").

25 6. In the second half of 2006, International Mortgage and International Escrow arranged a  
26 loan with Fremont Investment and Loan. The loan closed on December 20, 2006.  
27 International Mortgage and International Escrow had lost their license. The interest on  
28



1 the loan was over 10% and, because International was unlicensed, the interest should be  
2 sticken from the Note. The loan was in the amount of approximately \$750,000.

- 3 7. The property was foreclosed on by GMAC while related case 30-2008-104237 was  
4 temporarily dismissed due to abandonment of Plaintiff by his attorney.

5  
6 FIRST CAUSE OF ACTION  
7 DEFAMATION AND TORTIOUS INTERFERENCE WITH CREDIT  
8 AS AGAINST GMAC, Does 1 to 25

- 8 8. Plaintiff repeats and realleges the allegations of paragraphs 1 through 7, above, as though  
9 fully set forth herein at length.

- 10 9. Within the past two years, Defendant GMAC has published false ports through various  
11 credit reporting agencies that he owes over \$16 million as a result of the present  
12 foreclosure action.

- 13 10. Said publications are false.

- 14 11. On or about June 14 2009, Plaintiff spoke with GMAC's counsel, Samantha Lamm of  
15 Wolfe and Wyman, LLP., and requested that the false credit report be removed. Counsel  
16 agreed to have GMAC remove the false credit report. GMAC has failed to comply.

- 17 12. Said publications have damaged Plaintiff's business in that he is unable to lease property  
18 to store his business and trade tools, inventory and perform automotive and brake repair  
19 services. Further, he is unable to get a loan to purchase inventory. Plaintiff's business  
20 has been damaged in an amount subject to proof. Plaintiff's business assets and  
21 possessions were lost to storage during this time.

- 22 13. Said publications were published with malice within the meaning of Civil Code § 3294.  
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1 SECOND CAUSE OF ACTION  
2 FOR AN ACCOUNTING  
(As Against All Defendants)

- 3 14. Plaintiff repeats and realleges Paragraphs 1 through 13 as though fully set forth herein at  
4 length.  
5 15. Plaintiff requests a complete accounting for all transactions related to the subject Note  
6 secured by Deed of Trust, including, without limitation, all disbursements, payments,  
7 fees, points, additions to principal, penalties, interest, etc.

8 THIRD CAUSE OF ACTION  
9 FOR INJUNCTIVE RELIEF  
(As Against All Defendants)

- 10 16. Plaintiff incorporates paragraphs 1 through 15 as though fully set forth herein at length.  
11 17. There presently exists a dispute between the parties as to the lawfulness of said credit  
12 reports.  
13 18. Plaintiff requests the Court declare that Defendants' credit reports are false and unlawful  
14 and that the Court issue an injunction as against Defendants, and each of them, directing  
15 that they shall remove said credit report.

16 WHEREFORE, plaintiff prays for, judgment as against Defendants, and each of them, as  
17 follows:

18 ON THE FIRST CAUSE OF ACTION FOR NEGLIGENCE

- 19 1. ON THE FIRST CAUSE OF ACTION DEFAMATION AND TORTIOUS  
20 INTERFERENCE WITH CREDIT

- 21 2. For general damages according to proof;  
22 3. For special and consequential damages according to proof;  
23 4. For punitive and exemplary damages in an amount appropriate to punish Defendants and  
24 deter others from engaging in similar conduct;

25 ON THE SECOND CAUSE OF ACTION FOR ACCOUNTING

- 26 5. For a complete accounting for all transactions related to the subject Note secured by Deed  
27 of Trust, including, without limitation, all disbursements, payments, fees, points,  
28 additions to principal, penalties, interest, etc.

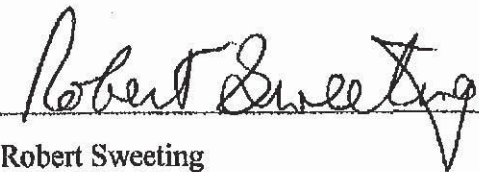
1 ON THE THIRD CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE  
2 RELIEF

- 3 6. For a declaration that Defendants' credit reports are unlawful and issue an injunction as  
4 against Defendants, and each of them, directing that they shall remove said credit report.

5 ON ALL CAUSES OF ACTION:

- 6 7. For costs of suit incurred herein; and  
7 8. For such other and further relief as the court deems just and proper.

8 Respectfully submitted,

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10   
11 Robert Sweeting

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14 [C:\Users\POWERBRAKEBOB\Documents\Complaint.wpd\MAC DEFAMATION.wpd]  
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**EXHIBIT “ J ”**

1 DANIEL A. SHAMA (State Bar No. 230420)  
2 SEVERSON & WERSON  
3 A Professional Corporation  
4 The Atrium  
5 19100 Von Karman Ave., Suite 700  
6 Irvine, CA 92612  
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10 SEVERSON & WERSON  
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13 San Francisco, CA 94111  
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16 Attorneys for Defendant  
17 GMAC MORTGAGE, LLC

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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

14 ROBERT SWEETING,  
15 Plaintiff,

16 vs.

17 GMAC MORTGAGE LLC., DOES 1 through  
18 25, inclusive,  
19 Defendants.

Case No.: 30-2010-00410079  
Hon. Thierry Colaw  
Dept. C-25

**GMAC MORTGAGE, LLC'S NOTICE  
OF DEMURRER AND DEMURRER TO  
COMPLAINT OF PLAINTIFF  
ROBERT SWEETING**

Date: March 11, 2011  
Time: 10:00 a.m.  
Dept.: C-25

[Filed Concurrently With Request For  
Judicial Notice]

Complaint Filed: September 21, 2010

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

FEB 07 2011

ALAN CARLSON, Clerk of the Court

BY B. LEA, DEPUTY

1 **PLEASE TAKE NOTICE** that on **March 11, 2011 at 10:00 a.m.** or as soon thereafter as  
2 counsel may be heard in Department C-25 of the Orange County Superior Court, Central District,  
3 located at 700 West Civic Center Drive, Santa Ana, California, a hearing will be held on the  
4 demurrer of Defendant GMAC Mortgage, LLC to the complaint of *pro per* Plaintiff Robert  
5 Sweeting.

6 The demurrer is made under Code of Civil Procedure section 430.10(e) on the ground that  
7 the complaint does not state facts sufficient to constitute a cause of action.

8 The demurrer is based on this notice, the demurrer, the memorandum of points and  
9 authorities, the complaint, the request for judicial notice, and all other papers on file in this action,  
10 as well as on any argument the Court entertains at the time of hearing.

11  
12 DATED: February 7, 2011

SEVERSON & WERSON  
A Professional Corporation

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14  
15 By: 

DANIEL A. SHAMA

16 Attorneys for Defendant  
17 GMAC Mortgage, LLC  
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**DEMURRER**

Defendant GMAC Mortgage, LLC demurs to the complaint on the following grounds:

1. The first cause of action for defamation/tortious interference with credit fails to state facts sufficient to constitute a cause of action because the doctrine of res judicata bars not only matters that were actually litigated but also those matters that could have been litigated. Plaintiff could have raised this claim against GMAC in the prior litigation, but he did not. GMAC prevailed in a final judgment on the merits. Plaintiff is now barred from suing for this claim. The first cause of action fails for the independent reason that the Fair Credit Reporting Act preempts Plaintiff's state law claim regulating a furnisher's liability in connection with its report to a credit reporting agency. Additionally, the first cause of action fails because FCRA creates no private right of action. Plaintiff therefore lacks standing to sue GMAC.

2. The second cause of action for accounting fails to state facts sufficient to constitute a cause of action because the doctrine of res judicata bars not only matters that were actually litigated but also those matters that could have been litigated. Plaintiff could have raised this claim against GMAC in the prior litigation, but he did not. GMAC prevailed in a final judgment on the merits. Plaintiff is now barred from suing for this claim. The second cause of action fails for the independent reason that the Fair Credit Reporting Act preempts Plaintiff's state law claim regulating a furnisher's liability in connection with its report to a credit reporting agency. Additionally, the second cause of action fails because FCRA creates no private right of action. Plaintiff therefore lacks standing to sue GMAC.

3. The third cause of action for declaratory and injunctive relief fails to state facts sufficient to constitute a cause of action because the doctrine of res judicata bars not only matters that were actually litigated but also those matters that could have been litigated. Plaintiff could have raised this claim against GMAC in the prior litigation, but he did not. GMAC prevailed in a final judgment on the merits. Plaintiff is now barred from suing for this claim. The third cause of action fails for the independent reason that the Fair Credit Reporting Act preempts Plaintiff's state law claim regulating a furnisher's liability in connection with its report to a credit reporting

1 agency. Additionally, the third cause of action fails because FCRA creates no private right of  
2 action. Plaintiff therefore lacks standing to sue GMAC.

3  
4 DATED: February 2, 2011.

SEVERSON & WERSON  
A Professional Corporation

5  
6  
7 By:   
DANIEL A. SHAMA

8 Attorneys for Defendant  
9 GMAC MORTGAGE, LLC  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 *Pro per* plaintiff Robert Sweeting, is no stranger to litigation. In fact, about fourteen  
5 months ago, he sued GMAC for supposed deficiencies with respect to the loan on his home.  
6 After several years of litigation, GMAC prevailed on the merits, first winning summary judgment  
7 and later striking Plaintiff's second amended complaint, filed without leave and after judgment  
8 was entered.

9 Unfortunately, history has seemingly repeated itself with the filing of this complaint.  
10 Indeed, in an overt attempt to delay the inevitable, Plaintiff sues GMAC again and again raises  
11 claims which could have been asserted in the prior litigation in GMAC. He cannot: The doctrine  
12 of *res judicata*, encompassing such potential claims, prevents Plaintiff from now litigating them.  
13 Further, the Fair Credit Reporting Act explicitly preempts Plaintiff's common-law claims and  
14 divests him of standing to sue.

15 On these bases, GMAC's demurrer should be sustained without leave to amend.

16 **II.**

17 **STATEMENT OF FACTS**

18 When any grounds for objection to a complaint appears on the face thereof, the objection  
19 on that ground may be taken by a demurrer. (Code of Civ. Proc., §430.30.) Grounds for  
20 objection by demurrer include that the pleading does not set forth sufficient facts to constitute a  
21 cause of action. (*Id.*, §430.10(e).)

22 A demurrer can be used only to challenge defects that appear on the face of the pleading  
23 under attack or from matters outside the pleading that are judicially noticeable. (Code of Civ.  
24 Proc., § 430.30(a); *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

25 On demurrer, a complaint's factual allegations are deemed true, but not its contentions,  
26 deductions, nor conclusions. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 (A court  
27 "treats the demurrer as admitting all material facts properly pleaded. ... The court does not,  
28 however, assume the truth of contentions, deductions or conclusions of law.")) Also, the court



1 may consider matters that can be judicially noticed. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 291.)  
2 Consistent with such rules, and without conceding for any other purpose the truth of Plaintiff's  
3 allegations, GMAC sets forth the facts pertinent to this demurrer.

4 Plaintiff sued GMAC in *Robert Sweeting v. Jason Kishaba, et al.*, Orange County  
5 Superior Court Case No. 30-2008-104237 for a variety of claims, including negligence,  
6 misrepresentation, fraud, conspiracy to commit fraud, cancellation of written instrument,  
7 temporary restraining order, breach of fiduciary duty, quiet title, breach of contract, violation of  
8 Business & Professions Code section 17200, breach of good faith and fair dealing, TILA, and  
9 conversion. (Req. Jud. Not., Ex. B.) Plaintiff claimed defects with respect to his loan for real  
10 property. (*Id.*)

11 GMAC prevailed on its Motion for Summary Judgment on these claims. Plaintiff  
12 responded by purporting to file his second amended complaint.<sup>1</sup> (Req. Jud. Not., Ex. C.)  
13 Because GMAC had prevailed and because Plaintiff filed without leave of Court, GMAC  
14 successfully moved to strike that pleading. (Req. Jud. Not., Ex. D.) The case concluded, it  
15 seemed, as to GMAC.

16 Undaunted, five months later, Plaintiff now files his "new" complaint to assert claims  
17 against GMAC. First, under a theory of defamation/tortious interference, he asserts that GMAC  
18 "published false reports through various credit reporting agencies that he owes over \$16 million  
19 as a result of the present foreclosure action..." (Compl., ¶9) These supposed representations  
20 were false and damaged Plaintiff's business. (*Id.*, ¶12.) Second, Plaintiff requested an  
21 accounting for all transactions related to his loan, and third, an injunction. (*Id.*, ¶14-18.)  
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26 <sup>1</sup> Notably, the allegations of the stricken second complaint are very similar to those raised  
27 in this case. There, as here, Plaintiff asserts that GMAC "published false reports through various  
28 credit reporting agencies that he owes over \$16 million as a result of the present foreclosure  
action..." (Req. Jud. Not, Ex. C., ¶178) There, as here, the supposed representations were false  
and damaged Plaintiff's business. (*Id.*, ¶182.) There, as here, Plaintiff also requested an  
accounting for all transactions related to his loan. (*Id.*, ¶184.)